IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

Crl.MC.No. 1243 of 2007()

AGAINST THE ORDER IN CRLMP.1561/2007 IN CC.292/2002 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

G.GOPALAKRISHNA PILLAI, AGED 57 YEARS, S/O.LATE G.BHASKARA PILLAI, PROPRIETOR, M/S.DIVYA EXPORT ENTERPRISES, SMITHALAYAM, DECENT JUNCTION, KOLLAM.

BY ADV. SRI.GEORGE JACOB (JOSE)
SMT.RESHMI POULOSE

RESPONDENTS: COMPLAINANTS

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1. THE BANK OF BARODA, REPRESENTED BY MANAGER, KOLLAM BRANCH.

2. CENTRAL BUREAU OF INVESTIGATION, COCHIN REPRESENTED BY IT'S STANDING COUNSEL, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1243 of 2007

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Dated this the 31st day of May, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 406 I.P.C. Proceedings have commenced as early as in 2002. The trial has not started yet. The amount involved is huge and the allegation relates to misappropriation and conversion of cashew nuts worth about Rs. 2.59 crores.

2. There was a suggestion that there is likelihood of a settlement and another bench of this court had indulgently granted time to the parties to settle the disputes before the commencement of the trial. The learned counsel for the petitioner submits that the settlement talks are even now on. They are at final stages. No compromise has been arrived yet.

3. When the matter came up for trial on 16.4.07, the petitioner was not ready for trial. He contended that his counsel, who was newly engaged, did not get sufficient time to go through the voluminous documents. The learned Magistrate indulgently granted the prayer for adjournment, subject to the condition that cost of

Rs.500/- must be paid to CW2, who was present in court. The matter was adjourned to 23.4.2007. According to the petitioner, the time granted was not sufficient. The learned Magistrate has not realistically taken note of the voluminous documents which the petitioner's counsel has to go through to prepare for the trial.

4. The petition was filed on 18.4.2007. On 23.4.2007, when the matter came up for trial again, CW2 was not present in court. The learned Magistrate insisted that the next witness must be examined. The petitioner was not present. His counsel was not ready for trial. Consequently warrant was issued against the petitioner and notice was issued to the sureties of the petitioner. The petitioner, in these circumstances, contends that the course adopted by the learned Magistrate to adjourn the case from 17.4.07 to 23.4.07 is most unjustified and at any rate the course adopted by the Magistrate on 23.4.07 is most harsh and unjust. I am unable to agree with the learned counsel for the petitioner at all that the learned Magistrate had not granted accommodation and adjustment to the petitioner. The petitioner cannot stall the proceedings and avoid the responsibility to get ready in the trial. He must do the same immediately and get ready for trial on the next date of posting.

5. It is submitted that a warrant of arrest has been issued against the petitioner and the petitioner apprehends that his application for bail may not

be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to the learned Magistrate under Section 482 Cr.P.C.

2. I do not find any merit in the prayer for issue of directions under Section 482 Cr.P.C. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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